IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3972 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3972 of 1991

MR YOGESH S LAKHANI for Petitioner No. 1

RULE SERVED for Respondent No. 1,3-7

MR BP TANNA for Respondent No. 2

MR NIKHIL KARIEL for Respondent No.5 & 7

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 26/10/2004

ORAL JUDGEMENT

1. In the present petition, the petitioner who is working as Deputy Executive Engineer with respondent No.2 -Rajkot Municipal Corporation has challenged the action

of the respondents in promoting the respondents Nos.3 to 7 to the posts of Deputy City Engineer. The petitioner has contended that the respondent No.2 has illegally fixed the quota of promotion to the said posts of Deputy City Engineer and reserving 75 % of the posts for Degree holders and leaving only 25 % posts to the diploma holders, to be filled by promotion. It is suggested that such classification is illegal and impermissible. The petitioner has therefore challenged the promotion orders of the respondent Nos.3 to 7 by resolution dated 10th June, 1991. It is the case of the petitioner that the decision of the respondent No.2 to fill up a promotional post of Deputy City Engineer by promotion by adopting the criteria of seniority cum merit is also illegal.

2. The petitioner has stated that the petitioner was working as Deputy Executive Engineer at the relevant time with the respondent No.2 Corporation. By resolution dated 8.5.1991 additional posts of Deputy City Engineer were created. In the same resolution, it was also decided that there will be a ratio of 3 : 1 between degree holders and diploma holders for filling of the said posts by way of promotion. The petitioner has stated in the petition that the said resolution was adopted by the respondent No.2 to favour the respondent Nos.5 & 7 who were relatives of the office bearers who were holding position of Chairman and Mayor respectively at the relevant time. The petitioner has therefore contended that the action of the respondent No.2 is illegal and malafide since the decision was taken only with a view to favour the respondent Nos.5 & 7. Even otherwise, it is suggested that the ratio of 3 : 1 fixed for filling up the posts of Deputy City Engineer by way of promotion between degree holder and diploma holders is illegal. Appearing for the petitioner, learned advocate Mr.Yogesh Lakhani in support of his contentions has relied upon the decision of the Hon'ble Supreme Court in case of ROSHANLAL V. UNION OF INDIA, AIR 1967 SC 1889. One may, however, note that in the said decision the Hon'ble Supreme Court was considering the question of rule which created quota for promotion from direct recruit as well as promotee though they were forming the same cadre, wherein it was observed that no discrimination can be made for future promotion and the classification which gave favourable treatment to the direct recruits in regard to promotion was found to be violative of Articles 14 and 16 of the Constitution of India.

3. The Counsel for the petitioner has also relied upon decision of the Hon'ble Supreme Court in case of

State of Mysore v. P. Narasingarao, reported in AIR 1968 SC 349. In the said case, the Hon'ble Supreme Court was considering the question of classification of two grades for different pay scales.

4. The respondents have filed affidavit-in-reply and resisted the petition. It is stated that the post of Deputy Executive Engineer is no longer in existence since 1995 and therefore, the grievance of the petitioner does not survive. It is further suggested that the Corporation wanted to make available best talent for promotion and had therefore made a distinction between degree holders and diploma holders and for such classification, neither discriminatory nor any violation of Article 16 of the Constitution of India. It is further stated in the affidavit that the respondents No.3 & 4 were related to then Chairman and Mayor, the same did not confer any additional benefits and the said respondents were promoted purely on merits.

5. From the material made available to the Court and submissions made, it is clear that at the relevant time when the promotion were being made to the Deputy Executive Engineer, there were no statutory rules in operation. In that view of the matter,it was open to the respondent No.2 to provide for the criteria for promotion and also provide for other relevant provisions for promotion to the said posts by way of issuing executive instructions. The Corporation therefore by adopting a resolution decided to fill up the posts in question by promotion by providing for ratio of 3 : 1 between the degree holders and diploma holders.

6. In the decision of THE STATE OF JAMMU AND KASHMIR V. TRILOKI NATH KHOSA AND OTHERS, AIR 1974 SC 1, the Hon'ble Supreme Court observed that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineer, they could, for the purposes of promotion to the cadre of Executive Engineers, be classified on the basis of the educational qualification and the Rules providing that graduates shall be eligible for such promotion, exclusion of the diploma holders does not violate Articles 14 & 16 of the Constitution of India.

7. In the decision of SHAMKANT NARAYAN DESHPANDE V. MAHARASHTRA INDUSTRIAL DEVELOPMENT CORPORATION AND ANOTHER, reported in AIR 1993 SC 1173 the Honl'ble Supreme Court held that for promotion to the post of Superintending Engineer, classification of degree holder and diploma holder is not violative of Articles 14 and 16

of the Constitution of India. It was further held that such classification made by the Corporation by merely passing resolution would not be illegal and a change in service condition by passing resolution would be permissible. In the said case, the Hon'ble Supreme Court upheld the quota of 75 % reserved for degree holders as against 25 % reserved for diploma holders for promotion provided by the Corporation.

8. In the decision of ASSAM STATE ELECTRICITY BOARD AND OTHERS V. GAJENDRA NATH PATHAK AND OTHER, AIR 1997 SC 3385, the Hon'ble Supreme Court held that for promotion to the post of Executive Engineer, classification on the basis of education qualification namely between the diploma holders and non diploma holders or between the diploma holders and graduate engineer is a valid classification. In the decision of RAJASTHAN STATE ELECTRICITY BOARD ACCOUNTANTS ASSOCIATION, JAIPUR V. RAJASTHAN STATE ELECTRICITY BOARD AND ANOTHER reported in AIR 1997 SC 882, the Hon'ble Supreme Court once again upheld classification of the employees for promotion on the basis of educational qualification.

9. From the above judicial pronouncements, it can be seen that it is well within powers of the employer to fix quota for promotion on the basis of the education qualification and that such quota can also be provided by adopting a resolution and when statutory recruitment rules are not in force, no objection can be taken to fixation of quota through adoption of the resolution. From the reply statement filed by the respondent, it can be seen that the quota for promotion between the degree holders and diploma holders in the ratio of 3:1 was adopted for securing best available talent. No exception can be taken to fixation of the quota.

10. Though certain allegations have been made by the petitioner regarding malafide, no officer is joined as respondent in personal capacity by name. Neither the then Mayor nor the Chairman is joined as the party respondents. In absence of sufficient material and in absence of necessary parties, who could have answered allegations of malafide, it is not possible for this Court to uphold this contention also.

In the result, petition is devoid of merits and is hereby rejected. Rule discharged. No order as to costs.

Date : 26.10.2004 [Akil Kureshi, J.]

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